THE CRITERION OF RESPONSIBILITY IN INSANITY.

THOMAS MACNAUGHTON DAVIE.

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THE CRITERION OF RESPONSIBILITY IN INSANITY.

"ACTUS NON FACIT REUM NISI MENS SIT REA". This maxim, so severely criticised by Stephen*, and admitting necessarily of many exceptions, has nevertheless, since popularised by Coke in his Third Institute, generally come to be regarded as the fundamental maxim of our Criminal Law.

The outward act alone does not constitute the crime. There must also be a "compassing, intent or imagination" of the same. Stated otherwise; there can be no crime without a guilty intent. This guilty intent may be general or specific. Where general, it need not necessarily be a criminal intention, but may consist in cases involving a mistake of fact, merely an intention to do a wrongful act, short of a crime. This was laid down by Denman J. in Rex v Prince, who said that a man who does an act which he knows to be illegal in the sense of amounting to a civil wrong, but which he does not know to be criminal, cannot set up a legal defence by merely proving that he thought he was committing a different kind of wrong from that which in fact he was committing.

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*Hist. Cr. Law of England V.2, ch. 18.

In certain other crimes, the "mens rea" is specific and may then be strictly identified with the criminal intention. In cases where, owing to the definition of the crime, such special intent must be demonstrated, the "mens rea" must be specific.

In law the existence of the "mens rea" is presumed. The criminal act itself is regarded as prima facie proof of its existence.* The absence of "mens rea" renders the accused non imputable i.e., he is entitled to an acquittal in respect of conduct which but for such absence or intent, would render him liable.

There is a presumption in Law that every man intends the consequences of his own acts; but this presumption may be rebutted and the absence of "mens rea" demonstrated, in certain cases of insanity and of drunkenness.

Illustrative of this principle, drunkenness rendering a person incapable of the intent, would be and is an answer in a charge of attempted suicide. In Rex v Moore, drunkenness was held to negative such intent. In the words of Chief Justice Jervis; "If the prisoner was so drunk as not to know what

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*Kenny Outlines Cr. Law. P.51.

she was about, how can you say she intended to destroy herself?"

This case, quoted with approval by our present Lord Chancellor in Rex v Beard, conveniently leads to the consideration of the difference in regard to legal liability of one who performs a criminal act in a state of drunkenness and one performing a similar act during an attack of delirium tremens.

This introductorily, and before proceeding to a detailed examination of the subject in issue.. "Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act.

The defence which is founded on drunkenness is one thing. The defence which is founded on insanity is another. The relevant considerations are not identical."*

In delirium tremens, insanity whether produced by drunkenness or otherwise is a defence to the

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*Dir. Pub. Pros. v Beard. House of Lords, 1920.

crime charged. The Law takes no note of the cause of the insanity and it is immaterial whether the insanity is permanent or temporary. The direction given by Mr. Justice Stephen is still Law.

"If a man by drunkenness brings on a state of disease which causes such a degree of madness even for a time, which would have relieved him from responsibility if it had been caused in any other way, then he would not be criminally responsible... If you think there was a distinct disease caused by drinking but differing from drunkenness and that by reason thereof he did not know that the act was wrong, you will find a verdict of "not guilty on the ground of insanity".* This decision was approved by the House of Lords in their recent pronouncement in the case of Rex v Beard, where the law regarding drunkenness as a defence in murder cases was authoritatively and finally stated. There has been no such recent authoritative pronouncement in regard to the defence of insanity in a trial for murder or similar crime. In such cases, our law is still based on the Answers given by a majority of judges in the House of Lords

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*R. v Davis, 1881. 14 Cov. C.C. P.563.

after the McNaghten trial in 1843. In point of law such answer should possess no inherent authority. They have what is termed "derivative authority". The answers were not given as judgments but arose as a result of a debate in the House of Lords on the McNaghten trial. At this debate it was agreed that the opinion of the judges should be sought in regard to the law applied to cases where the defence of insanity is tendered. Since that date, these answers possessed of no binding authority, have nevertheless become the basis for directions by the judges on the matter of the accused's "responsibility".

This term, which will arise frequently in the course of our examination of the subject, calls for special scrutiny lest we ascribe to it any signification other than that which it is generally conceded to possess. It does not mean "moral responsibility", and so a consideration of the metaphysical questions underlying the doctrines of Free Will and of Determinism will not arise. Its meaning is purely "legal responsibility" or liability to be punished for one's acts under the present state of the law.

The term is a legal one and nothing more. Sir James Stephen says: "Our leading principle which should never be lost sight of as it runs through the

whole subject, is that judges directing juries have to do exclusively with this question: Is this person responsible in the sense of being liable by the Law of England as it is, to be punished for the act which he has done?"*

The penal law lays down what acts are to be punished and what acts are to be exempt from punishment, i.e., it determines the responsibility. Every man accused of a like crime has a like responsibility.

By the Criterion of Responsibility we mean the test applied to determine whether the accused is liable to punishment according to the present state of our criminal law. By the criterion of responsibility in insanity we mean such test applied to the accused where the defence is one of insanity. Such criterion is afforded at present by the Answers above referred to in McNaghten's case.

This case, which aroused so much public feeling at the time, and which resulted later in the debate in the House, and the more famous Answers of the judges, arose out of the murder of Mr. Drummond, private secretary to Sir Robert Peel, by one McNaghten, McNaghten, mistaking Mr. Drummond for Sir Robert Peel whom he imagined to be responsible

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*Hist. Cr. Law, V. Ch.19.

for, or implicated in, an alleged conspiracy against himself, shot him and thereafter was tried and acquitted on the verdict of "not guilty on the grounds of insanity".

It may be of interest, if we explain parenthetically, how this latter verdict has been altered in form and now reads "Guilty but insane". Sir Herbert Stephen has recently made public the reason by which this change came about.* In 1882 a lunatic fired a pistol at Queen Victoria. He was tried for high treason and found "not guilty". This verdict displeased Her Majesty who, not appreciating the fact that to constitute the crime there must be in addition to the outward act, the criminal "mens rea", insisted that the man was really guilty and that the verdict should be "Guilty but insane". This verdict was made statutory by the Trial of Lunatics Act 1883.

To consider the Answers themselves. The Answers to Questions 1 and 4 are of little practical value, as compared with the Answer to Questions 2 and 3. They afford, however, an additional criterion in the defence of insanity to that state in the joint answer, inasmuch as they lay down that proof that the accused was labouring under a partial delusion (but was (not)?

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*"Legal Responsibilities" corr. Times, 15/12/20.

otherwise insane) and that by reason of this delusion, he acted in such a way, that, did the state of things exist as he deludedly imagined, it would have justified or condoned his action, he would to that extent be non-imputable.

It is not incumbent on us to enter into a detailed criticism of these two answers -- although endless criticism might be made -- because they are of very small importance in practice. So although it is true that these answers do not in reality reply to the questions they affect to answer, and that they are based on a misconception of the nature of a delusion, they may be regarded, as far as our present day trials are concerned, as effete: but they are still Law.

No doubt the judges were considerably influenced by the evidence of Dr. Munro, whose views could not now be accepted by psychiatrists. It is to his evidence that must be ascribed the phrase occurring in the answers -"persons who labour under partial delusions only, and are not in other respects insane."

The term "partial delusion" has provoked much criticism from the many writers on this subject and, applied to persons who are not otherwise insane, is said to be without meaning. Even in the Borderland case of the mattoid type where delusion on an abstract

subject may be the only objective evidence of eccentricity, it is undoubted that the whole personality is affected.

'By a partial delusion', says Dr. Mercier,* 'I should myself understand a delusion which was not completely confirmed but about the truth of which the deluded person entertained a doubt.' At the time, too, when the judges gave their answers, the terms 'delusion' and 'insanity' were regarded as being almost synonymous, but with the growth of knowledge of insanity and the latitude with which certain passages of the judges' answers have been construed: serious defects in the Answers have been glossed over; as also increased attention has been focussed on the criterion laid down in the joint answer to questions 2 and 3. Questions 2 and 3, and their answer, which is supremely important, are as follows:-

Question 2. What are the proper questions to be submitted to the jury when a person afflicted with insane delusions respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for instance) and insanity is set up as a defence?

Question 3. In what terms ought the question to be

*Cr. Res. p. 176.

left to the jury as to the prisoner's state of mind when the act was committed?

Answer 2 and 3. "As these two questions appear to us to be more conveniently answered together we submit our opinion to be that the jurors ought to be told in all cases that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to their satisfaction and that to establish a defence on the ground of insanity it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act or if he did know it, not to know that he was doing what was wrong..."

This criterion - knowledge of the nature and quality of the act or knowledge of its wrongness - was intended to apply only to cases of delusion. It is not now so restricted, and is quoted by judges at the present day to enable the jury to determine the responsibility in all cases of insanity. It is referred to as the "knowledge test" in distinction to the tests applied in other countries e.g. Germany, where the criterion is whether there is free determination of the will.

To consider the words and phrases seriatim:

Nature and 'quality' may be regarded as synonymous terms. Sir James Stephen does not so regard them and construes 'quality' as the 'legal significance' of the act. Oppenheimer has drawn a more extensive differentiation* but in practice, this seems of little import.

The term 'to know' presents more difficulties; for the whole significance of the answer depends on our interpretation of this word. "Knowing" has been described as an intellectual faculty purely separable as it were from the other faculties. Psychologists do not now accept this.

Intellectual processes are not now regarded as being purely cognitive, they are not entirely separable from the influence of the emotions and the will. "Every mental act", says McDougall,** "presents three aspects, a knowing, a being affected and a striving; technically, a cognition, and affection and a conation and these are not separable parts of the thinking process, but one or other of these aspects is commonly dominant so we are led to speak of each kind of mental process by the name of the dominant aspect."

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*Oppenheimer C.R. of Lunatics (1909) p.
**Psychology. P.63.

Sir James Stephen in declaring that a man who acts under an irresistible impulse does not know that his act is wrong, ascribes to the word 'know' a meaning anticipatory of the modern psychological teaching, but nevertheless, one which is far removed from the popular usage of the word. In ordinary parlance the words 'to know' mean 'to be aware of' and this awareness applied to a criminal act to be complete would seem to have to comprise the following:

1. There must be awareness on the part of the subject that he is the actor.

2. There must be awareness on the part of the subject in relation to the object i.e. the act performed. He must know that he is doing the act, and what act he is doing.

Laid alongside the criterion, knowledge of the nature and quality of the act, or if not, then the knowledge of its wrongness, our two propositions will read:

If the actor is aware of his identity as such, he must also be aware not only that he does the act, but realise the nature of the act he does i.e. to cite the example quoted in the McNaghten trial, if he cut a man's throat thinking it to be the throat

of a pig, he cannot be said to know the nature of his act. If he does not 'know' this he must know that the act is wrong morally or legally.

If 'nature' and 'quality' are regarded as synonymous then 'wrong' perhaps were better construed as 'legally wrong'; but where 'quality' would indicate (as Stephen considers it does) the 'legal significance' of the act, then 'wrong' will be more properly regarded as 'morally wrong', otherwise the answer is needlessly redundant. However, that may be, one ingredient in the knowledge would seem to be required i.e. that the act is a criminal one by the law of the land.

The word 'wrong' is interpreted by Stephen to mean 'morally wrong'. Mercier and most writers since Stephen's time are of the same opinion. Oppenheimer strenuously contends that the word is to be regarded as meaning 'legally wrong' and in support of this contention quotes Lord Brougham in the debate in the House of Lords in McNaghten's case who stated that he knew the learned judges used the phrase with reference to the commands of the law. They could only know one kind of right and wrong; "the right is when you act according to the law, and the wrong is when you break it".

Our own opinion is that 'wrong' must be construed as 'legally wrong'. In support of this may be quoted the direction by Denman J. in Rex v Offord (1840), prior to McNaghten's case:

"The question is whether the prisoner .... was under the influence of a diseased mind and was really unconscious, at the time he was committing the act, that it was a crime", and that by Baron Bramwell, some years after (in R v Dove 1856) "Doing what is wrong means an act prohibited by law because a man might imagine that killing was a right thing to do, and it might be contrary to law. For instance, he might think it right to take from the rich and give to the poor: but if he did it, not knowing it was wrong, he must not know that the thing which he did was what the law will punish him for."

Whatever exception may be taken to the wording of this criterion it cannot be justly stated that the terms above mentioned ever do cause a technical obstruction to the course of justice. Rather, the criticism which is directed against the 'knowledge test' is that the only faculty of mind whose disorder is evidence of an absence of responsibility is the faculty of 'knowing'.

The faculty of knowing is the test of irresponsibility and in nowise a test of insanity. The law does not presume to say what constitutes or does not constitute insanity. It merely lays down what constitutes the state of responsibility. The law does not admit, as does the French law, that a state of insanity necessarily entails a state of irresponsibility.

The law states that the accused will be deemed irresponsible if: (1) he was insane at the time of the act and (2) that on account of disease of his mind he did not know what he was doing or did not know he was doing wrong.

In regard to the first of these, the presence of insanity is ascertained by medical experts by such criteria as they see fit to employ. The mode of establishing its presence is no concern of the laws.

In regard to the second - the criterion of responsibility. This is not intended to be the law's criterion of insanity. It is simply the test which the law applies to find out whether, where insanity is demonstrated, the accused is to be held liable for his acts. It is to the failure in discriminating between the criterion of insanity

and the criterion of responsibility - the one a medical, the other a legal matter - that much of the present confusion in which the subject finds itself is to be traced. Again and again writers in attacking the present criterion of responsibility do so under the misapprehension that the law formulates therein a criterion of insanity. This misunderstanding can be easily apprehended when we consider these cases in which there is insanity and where there exists or seems in the medical experts view, to exist, a mental state not in accordance with accountability. In such a case where the accused is adjudged responsible, and that by means of a criterion of his "knowledge" of the act, which, as it happens, would in no wise demonstrate the accused's insanity, the expert may be excused for imagining that the law has seemed to deny the fact of insanity, in denying the irresponsibility. This erroneous conception of the nature of the criterion of responsibility is intensified by the fact that the expert witness is interrogated not only as to the fact of alienation, but also as to whether the accused "knew" the nature of the act or its wrongness - an interrogation psychological in essence, which many medical men feel it impossible

to answer.

Now, the law ought to be an enlightened law, and in determining responsibility, ought to employ a criterion in accordance with the views of enlightened established opinion on mental disease and its effects. Such defects, as the criterion in McNaghten's case undoubtedly has, have been considerably diminished by the very elastic interpretation put upon the phraseology especially in recent years; and it is to this elasticity of interpretation that must be ascribed the fact that very rarely does injustice ensue on its application. How liberal this construction may become we have seen in noting the inclusion (by Sir James Stephen and others) in the category of defective 'knowledge', an "irresistible impulse" to do a criminal act. (Vide ante.) The law does not however recognise this as a defence, and does not regard such an impulse as annulling the presumption of knowledge, and indeed such impulses are rare in cases of undoubted alienation in which the accused has at the same time, knowledge of the nature of the act, arising, as they do, rather, in cases classified as psychoneuroses, and therefoe not eligible as a defence.

Those who allege the law's injustice on this matter in that the law regards only one type of insanity (and perhaps only that type in which there are partial delusions only), who lay stress on the equivocal interpretations put on the words 'know' and 'wrong', who say that the Answers constitute no binding authority, or that at best they only deal with certain specified questions and are not intended to be a complete exposition of the law, are answered effectually by the accepted practise of our courts.

No! to our mind more cogent arguments directed against the state of our law regarding the criminal reponsibility of the insane, emanate rather from those who would prefer to regard insanity "per se" as conferring immunity from punishment. These arguments may be specified as follows:-

A delusion is not to be regarded as a mental disorder affecting only one particular sphere of mental activity, leaving the rest of the mind unimpaired. Rather the whole personality is poisoned at its source: the whole reason is corrupted.

"In all cases in which delusion exists," says Mercier, "there is invariably associated with the delusion and disorder and confusion of the process of thinking which prevents the deluded person from

forming sane judgments about matters that are connected in his mind with the delusion. This area of disorder is of different extent in different cases. It is always difficult to know how far it extends,"* and elsewhere "the delusion is not an isolated disorder. It is merely the superficial indication of a deep-seated and widespread disorder. Precisely how far it extends it is never possible to say; but it is certain that the delusion itself is the least part of the disorder and for this reason no deluded person ought ever to be regarded as fully responsible for any act he may do."**

How the above statements of this brilliant writer are to be reconciled with his entire concurrence with the dictum of Stephen that "it is, and it is quite clear that it ought to be the law, that the mere existence of an insane delusion which does not in fact influence particular parts of the conduct of the person affected by it, has no effect upon their legal character," is difficult to understand.***

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* C. R. p. 189.

** do. p. 126.

***Hist. Cr. Law, V.2, Ch. 19,

If it be true that the extent to which a delusion affects the mind is indefinable, that its mere presence indicates a corruption of the whole personality, that it is never possible to say that certain parts of the conduct are unaffected by it, how can it be stated that such and such an act is untainted by its presence? Contrariwise, if the view be accepted that conduct in a deluded person may be uninfluenced by the delusion, and that the person may be regarded - so far as that particular conduct is concerned - as sane, is this not tantamount to an admission in the practical truth of that doctrine of "partial delusion, the person being otherwise sane" - a doctrine unsupported by any authority? The acceptance of this latter view that conduct which does not appear to be influenced by a co-existing delusion, is not thereby influenced, has its corollary in the law regarding the testamentary capacity of the insane; Civil Irresponsibility is not assumed by law necessarily to result from insanity. By law an insane person may make a will or a contract, and if the party making such was not influenced by his insanity to make such will or contract otherwise than he would have made it if sane, it will be a binding one. G.M. Robertson opposing the doctrine of "insanity therefore

irresponsibility" says: "Were the view accepted that all insane persons were irresponsible for all their acts because of their insanity - which is quite at variance with medical experience and knowledge - it would deprive all insane persons without further evidence or inquiry, of their other responsibilities and rights. It would constitute a great hardship if, for example the power of an insane person to make a will who at present was held by law to have this testamentary capacity, were taken away from him without inquiry."*

Such deprivation might not, of course, take place, even although the doctrine of criminal irresponsibility in insanity were accepted; for the reform of one department of our law is frequently unattended by its logical outcome in another: and it would only be in keeping with many other anomalies of our law to have a recognition of criminal irresponsibility and at the same time in certain cases of insanity, civil responsibility.

None the less, we cannot accept this doctrine** for whilst it is true that the presence of a delusion does stigmatise its possessor as insane; and whilst

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* Times 15/12/2o.

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it is therefore incorrect to speak of such a person as ever being "not otherwise insane", nevertheless such insane person can and undoubtedly often does perform acts (e.g. criminal acts) which are not really insane acts but which arise from the same sources as those of sane persons.

In regard to the other pleas put forward for a recognition of a state of irresponsibility in all cases of insanity, we have flimsier arguments to deal with. To advocate the universal irresponsibility of the insane, and at the same time never to allow such a doctrine to have its logical outcome in the institutions for the insane (where the equivalent at any rate of punishment is every day meted out to the offenders) is an irreconcilability. Nor can it be doubted surely, that the majority of lunatics are influenced by the ordinary hopes and fears such as affect the conduct of all of us; and that it is possible for them to act outside the space of their insane conduct.

Even in cases gravely affected, many "can mask their abnormal thoughts and act in an apparently normal manner in spite of fixity of delusions. This is commonly affected by paranoics to escape

hospital detention.*

We cannot accept this doctrine of irresponsibility. Such an upheaval of our judicial methods as it would entail, with no compensatory benefit, cannot be advocated. Rather, we are of opinion that the coalescence of the hitherto distinct provinces of Medicine and Law could not but be attended by many dangers. The ever widening conception of the term insanity coloured, as it would be, by the ephemeral theories of the day would be effectual in excusing a heterogeneous class of persons, leaving only the innocent convicted of crime for "only the innocent could be pronounced free from psychical peculiarity".**

The criminal responsibility of the insane is determined after the insanity has been admitted; but to a considerable number of accused persons, the law's criterion of responsibility cannot be applied, inasmuch as such persons cannot be defined as lunatics, although admittedly evidencing considerable departure from normal mentality, and the criterion cannot apply where the lunacy is not

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*Basis of Psychiatry (Buckley) p.173 (1921)

**Wharton & Stille's Med. June 1873.

demonstrated. Comprising as they do, the mattoids and eccentrics, the psychoneurotics, the victims of hysteria in its manifold forms, they constitute the "borderland cases" of insanity.

It has been urged in this country and in France (by the representatives of the neoclassic school) that such individuals should never incur a full responsibility for their actions. In France the borderland cases are not restricted to those we have mentioned above, but under the appellation of "demi-fous", include the senile, the degenerate and those who on account of accident or illness, are imagined to be more prone to commit criminal acts.* Such "diminished responsibility" would involve as its consequences the mitigation of punishment. Accurately defined, responsibility in its legal sense admits of no degrees. It is absolute; and the demand that such "demi-fous" should incur a "diminished responsibility" has, strictly speaking, no meaning. Mitigation of the punishment could follow the determination of the responsibility, and in practice very often in such cases does so. We cannot subscribe to the demands of those who seek to establish a state of "semi responsibility";

*Salleilles "Individualisation of Punishment" p.303

for we cannot hide from ourselves where such an innovation would lead. It would lead to the obliteration of the distinction, at present clear cut and well defined, between a state of responsibility and irresponsibility - a distinction the existence of which in its entirety is vital. The present discretion allowed to the judges in all such cases, and freely exercised, would appear to form a sufficient safeguard against the possibility of injustice. It is not by the acceptance of the view that irresponsibility invariably accompanies insanity, nor by such suggestion as of the introduction of the criterion of "semi responsibility" that our present law will be improved. Nor are we disposed to seek any other criterion than that of the judges in McNaghten's case. This criterion exempts from punishment the great majority of the criminal insane. It exempts the epileptic who acts in a state of automatism. It does not exempt the "moral imbecile" as a rule. It is not a perfect criterion, but it has the merit of working well in practise. There is a small percentage of cases amongst the insane deserving of exemption, whom, however, the criterion would find responsible. We consider that the reform most likely to lead to

their exoneration is that suggested by Oppenheimer. In law a man is presumed to be sane and responsible for his acts. Even when proved to be insane he is presumed to be responsible. It is this latter presumption which Oppenheimer would wish to see reversed. He says:

"I hold that whilst the most definite proof should be required of the existence of mental disease, when once it has been established that the prisoner is a lunatic, the present presumption of the law should be reversed; and it ought to be laid down as a rule of evidence that those proved to be of unsound mind should be assumed, until the contrary be shown, not to know the nature and quality of their acts and that which they were doing was wrong".*

With this view we express our cordial agreement. Adopted, it would bring about a much needed reform.

Oppenheimer adds that the arguments in its favour would be immeasurably strengthened if the experts formed a permanent professional body instructed and called by the court.

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* Opp. C.R. P.253.

The acutest controversy has raged around the answers in McNaghten's case for well nigh a century. There is little hope of its dying down, stirred up anew as it is, by every fresh case involving a defence of insanity. In one camp are those who strive for the recognition of irresponsibility in all cases of insanity; these are united in denying the justice of our present law. In the other are those who are content to accept, with one or more of the suggested modifications, the criterion as laid down in McNaghten's case as being as just and in application as equitable, as could be devised. We number ourselves amongst the latter.

Meanwhile we should welcome a pronouncement of our law by the highest judicial authorities, such as would unify the many directions given since McNaghten's day, discard those answers based on the descredited theories of nature of delusion; and in defining anew, the much disputed phraseology embodied in them would clarify the conception of the criticism of responsibility and its application.

The future may perhaps bring us, as a result of the accumulated psychological studies of centuries, a test more exact, more easily applicable and more just than that embodied in the Answers in

McNaghten's case - but this will continue to afford, until that day arrives, our safest and most practicable criterion.

S U M M A R Y.

A Study of the criminal "mens rea".

The relevant considerations in a defence of drunkenness and in one of insanity, not identical.

Definition of 'responsibility'.

Answers of the judges reviewed and analysed.

The doctrine of 'partial delusion', in theory and practice.

The criterion examined.

The significance of its phraseology.

Insanity should not always entail a state of irresponsibility.

Civil responsibilities of the Insane.

A state of semi-responsibility cannot be admitted.

Acceptance of the criterion as the most practicable and the most just criterion available.

Plea for the adoption of a change in procedure (reversal of presumption of responsibility in the insane) as recommended by Oppenheimer.

Question 1.- 'What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons, as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?'

Question II. - 'What are the proper questions to be submitted to the jury when a person afflicted with insane delusions respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for instance) and insanity is set up as a defence.'

Question III. - 'In what terms ought the question to be left to the jury as to the prisoner's state of mind when the act was committed?'

Question IV. - 'If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?'

Answer I. - 'Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land.'

ANSWER II and III. - 'As these two questions appear to us to be more conveniently answered together, we submit our opinion to be that the jurors ought to be told, in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring

under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, (sic) that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury, on these occasions, has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law administered on the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one that he ought not to do, and if that act was at the same time contrary to the law of the land, he is

punishable; and the usual course, therefore, has been to leave the question to the jury whether the accused had a sufficient degree of reason to know he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and corrections as the circumstances of each particular case may require.'

Answer IV.- 'The answer must of course depend on the nature of the delusion; but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusions exist were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.'
